

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:17-cv-01569-KBJ

KEEPING GOVERNMENT BEHOLDEN, INC. v.
DEPARTMENT OF JUSTICE
Assigned to: Judge Ketanji Brown Jackson
Cause: 05:552 Freedom of Information Act

Date Filed: 08/02/2017
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

**KEEPING GOVERNMENT
BEHOLDEN, INC.**

represented by **Kelly Brian McClanahan**
NATIONAL SECURITY COUNSELORS
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ATTORNEY TO BE NOTICED

V.

Defendant

DEPARTMENT OF JUSTICE

represented by **Jason Todd Cohen**
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Date Filed	#	Docket Text
08/02/2017	<u>1</u>	COMPLAINT against DEPARTMENT OF JUSTICE (Filing fee \$ 400 receipt number 0090-5059599) filed by Keeping Government Beholden, Inc.. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons)(McClanahan, Kelly) (Entered: 08/02/2017)
08/04/2017		Case Assigned to Judge Ketanji Brown Jackson. (zsb) (Entered: 08/04/2017)
08/04/2017	<u>2</u>	SUMMONS (3) Issued Electronically as to DEPARTMENT OF JUSTICE, U.S. Attorney and U.S. Attorney General (Attachment: # <u>1</u> Consent Form)(zsb) (Entered: 08/04/2017)
08/14/2017	<u>3</u>	GENERAL ORDER AND GUIDELINES FOR CIVIL CASES BEFORE JUDGE KETANJI BROWN JACKSON. The Court will hold the parties and counsel responsible for following these directives, and parties and counsel should pay particular attention to the Courts instructions for briefing motions and filing exhibits. Failure to adhere to this Order may, when appropriate, result the imposition of sanctions and/or sua sponte denial of non-conforming motions. Signed by Judge Ketanji Brown Jackson on 8/14/2017. (lckbj1) (Entered: 08/14/2017)
08/18/2017	<u>4</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 8/10/2017. (Answer due for ALL FEDERAL DEFENDANTS by 9/9/2017.), RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 8/9/17., RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed.

		DEPARTMENT OF JUSTICE served on 8/9/2017 (McClanahan, Kelly) (Entered: 08/18/2017)
09/12/2017	<u>5</u>	NOTICE of Appearance by Jason Todd Cohen on behalf of DEPARTMENT OF JUSTICE (Cohen, Jason) (Entered: 09/12/2017)
09/13/2017	<u>6</u>	ANSWER to Complaint by DEPARTMENT OF JUSTICE.(Cohen, Jason) (Entered: 09/13/2017)
09/15/2017		MINUTE ORDER. Before the Court in this FOIA case are a complaint and an answer. It is hereby ORDERED that the parties shall promptly confer and file a joint proposed schedule for briefing or disclosure, on or before 9/29/2017. Signed by Judge Ketanji Brown Jackson on 09/15/2017. (lckbj1) (Entered: 09/15/2017)
09/15/2017	<u>7</u>	MOTION to Clarify <i>Deadline for Defendant to Answer or Otherwise Respond to Complaint</i> by DEPARTMENT OF JUSTICE (Attachments: # <u>1</u> Attachment 1 – Email Correspondence re Answer Deadline, # <u>2</u> Proposed Order)(Cohen, Jason) (Entered: 09/15/2017)
09/18/2017	<u>8</u>	Memorandum in opposition to re <u>7</u> MOTION to Clarify <i>Deadline for Defendant to Answer or Otherwise Respond to Complaint</i> filed by KEEPING GOVERNMENT BEHOLDEN, INC.. (Attachments: # <u>1</u> Exhibit A – McClanahan declaration, # <u>2</u> Exhibit B – Clemons motion, # <u>3</u> Exhibit C – Clemons docket, # <u>4</u> Text of Proposed Order)(McClanahan, Kelly) (Entered: 09/18/2017)
09/18/2017		MINUTE ORDER. The government has filed a <u>7</u> Motion to Clarify, in which it seeks clarification that the correct answer deadline was September 13, 2017. Having reviewed the government's motion and the Plaintiff's <u>8</u> Opposition, the Court will deem the government's <u>6</u> Answer to be timely, and will accept it. The government's <u>7</u> Motion is MOOT. The parties' deadline to submit a joint proposed schedule for briefing or disclosure remains September 29, 2017. Signed by Judge Ketanji Brown Jackson on September 18, 2017. (lckbj2) (Entered: 09/18/2017)
09/29/2017	<u>9</u>	Joint MOTION for Extension of Time to File <i>Joint Proposed Schedule</i> by KEEPING GOVERNMENT BEHOLDEN, INC. (Attachments: # <u>1</u> Text of Proposed Order)(McClanahan, Kelly) (Entered: 09/29/2017)
10/03/2017		MINUTE ORDER granting, for good cause shown, <u>9</u> Motion for Extension of Time to File Proposed Briefing Schedule, nunc pro tunc. It is hereby ORDERED that the parties' proposed briefing schedule is due on or before 10/3/2017. Any further requests for extensions of time must comply with <u>3</u> the Court's General Order and Guidelines for Civil Cases. Counsel is specifically directed to Section 5 of the Appendix to the General Order and Guidelines. Signed by Judge Ketanji Brown Jackson on 10/3/2017. (lckbj1,) (Entered: 10/03/2017)
10/03/2017	<u>10</u>	PROPOSED BRIEFING SCHEDULE <i>and Production Schedule</i> by KEEPING GOVERNMENT BEHOLDEN, INC.. (McClanahan, Kelly) (Entered: 10/03/2017)
10/06/2017		MINUTE ORDER setting a Status Conference for 10/18/2017 at 11:00 AM in Courtroom 17 before Judge Ketanji Brown Jackson. Signed by Judge Ketanji Brown Jackson on 10/6/2017. (lckbj1) (Entered: 10/06/2017)
10/10/2017	<u>11</u>	Consent MOTION to Continue <i>Change Date of Hearing</i> by DEPARTMENT OF JUSTICE (Attachments: # <u>1</u> Proposed Order)(Cohen, Jason) Modified event title on 10/11/2017 (znmw). (Entered: 10/10/2017)
10/10/2017	<u>12</u>	RESPONSE re <u>11</u> Consent MOTION to Change Date of Hearing filed by KEEPING GOVERNMENT BEHOLDEN, INC.. (McClanahan, Kelly) (Entered: 10/10/2017)
10/11/2017		MINUTE ORDER granting <u>11</u> Motion to Change Date of Hearing. It is hereby ORDERED that the Status Conference currently set for 10/18/2017 is VACATED and RESET for 10/26/2017 at 02:00 PM in Courtroom 17 before Judge Ketanji Brown Jackson. Signed by Judge Ketanji Brown Jackson on 10/11/2017. (lckbj1) (Entered: 10/11/2017)
10/26/2017		Minute Entry for proceedings held before Judge Ketanji Brown Jackson. Status Conference held on 10/26/2017. Plaintiff's Briefing Schedule due by 11/1/2017; Response due 11/15/2017; Reply due 11/20/2017. Plaintiff's Motion to Compel due by

		11/14/2017; Response due by 12/22/2017; Reply due by 1/12/2018. Scheduling order forthcoming via Chambers. (Court Reporter: Barbara DeVico) (jd) (Entered: 10/26/2017)
10/27/2017		MINUTE ORDER. The parties appeared before the Court on October 26, 2017, for a status conference regarding this FOIA case. Upon consideration of the parties representations and dispute over the production schedule, it is hereby ORDERED that, on or before November 30, 2017, the FBI and OIP shall produce all of the responsive, non-exempt documents that pertain to Counts 6 and 7 of the <u>1</u> Complaint. It is FURTHER ORDERED that Plaintiff shall submit a proposed disclosure schedule regarding the FBIs production of the documents at issue in Count 5, along with its reasons for any request for expedition, on or before November 1, 2017; the FBI shall file its response thereto on or before November 15, 2017; and Plaintiff shall file any reply on or before November 20, 2017. It is FURTHER ORDERED that Plaintiff shall file any motion pertaining to the preservation of the documents at issue in Count 3 on or before November 14, 2017; the FBI shall file its response thereto on or before December 22, 2017; and Plaintiff shall file any reply on or before January 12, 2018. Signed by Judge Ketanji Brown Jackson on 10/27/2017. (lckbj1) (Entered: 10/27/2017)
10/30/2017		ENTERED IN ERROR.....MINUTE ORDER. The parties appeared before the Court on October 26, 2017, for a status conference regarding this FOIA case. Upon consideration of the parties representations and dispute over the production schedule, it is hereby ORDERED that, on or before November 30, 2017, the FBI and OIP shall produce all of the responsive, non-exempt documents that pertain to Counts 6 and 7 of the <u>1</u> Complaint. It is FURTHER ORDERED that Plaintiff shall submit a proposed disclosure schedule regarding the FBIs production of the documents at issue in Count 5, along with its reasons for any request for expedition, on or before November 1, 2017; the FBI shall file its response thereto on or before November 15, 2017; and Plaintiff shall file any reply on or before November 20, 2017. It is FURTHER ORDERED that Plaintiff shall file any motion pertaining to the preservation of the documents at issue in Count 3 on or before November 14, 2017; the FBI shall file its response thereto on or before December 22, 2017; and Plaintiff shall file any reply on or before January 12, 2018. Signed by Judge Ketanji Brown Jackson on 10/30/2017. (lckbj2) Modified on 10/30/2017 to enter in error as duplicate.(ztnr) (Entered: 10/30/2017)
11/01/2017	<u>13</u>	MOTION to Expedite <i>Consideration of Count 5</i> by KEEPING GOVERNMENT BEHOLDEN, INC. (Attachments: # <u>1</u> Text of Proposed Order)(McClanahan, Kelly) (Entered: 11/02/2017)
11/14/2017	<u>14</u>	MOTION for Order to Preserve Records by KEEPING GOVERNMENT BEHOLDEN, INC. (Attachments: # <u>1</u> Exhibit A – RM Manual (part 1), # <u>2</u> Exhibit A – RM Manual (part 2), # <u>3</u> Exhibit B – FBI E-Mail Policy, # <u>4</u> Text of Proposed Order)(McClanahan, Kelly) (Entered: 11/15/2017)
11/15/2017	<u>15</u>	ENTERED IN ERROR.....Memorandum in opposition to re <u>13</u> MOTION to Expedite <i>Consideration of Count 5</i> filed by DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Declaration of David M. Hardy)(Cohen, Jason) Modified on 12/20/2017 (jf). (Entered: 11/15/2017)
11/20/2017	<u>16</u>	TRANSCRIPT OF PROCEEDINGS before Judge Ketanji Brown Jackson held on 10–26–17; Page Numbers: 1–69. Date of Issuance: 11–20–17. Court Reporter/Transcriber Barbara DeVico, Telephone number 202–354–3118, Transcripts may be ordered by submitting the <u>Transcript Order Form</u> For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at

		www.dcd.uscourts.gov. Redaction Request due 12/11/2017. Redacted Transcript Deadline set for 12/21/2017. Release of Transcript Restriction set for 2/18/2018.(DeVico, Barbara) (Entered: 11/20/2017)
11/21/2017	<u>17</u>	REPLY to opposition to motion re <u>13</u> MOTION to Expedite <i>Consideration of Count 5</i> filed by KEEPING GOVERNMENT BEHOLDEN, INC.. (Attachments: # <u>1</u> Exhibit A – Seavey status email, # <u>2</u> Exhibit B – Boundaoui 3d JSR, # <u>3</u> Exhibit C – Boundaoui 4th JSR, # <u>4</u> Exhibit D – Lardner JSR, # <u>5</u> Exhibit E – ACLU J. Stip., # <u>6</u> Exhibit F – NDLON Order, # <u>7</u> Exhibit G – Boundaoui 9–26 transcript, # <u>8</u> Exhibit H – Boundaoui 9–20 transcript, # <u>9</u> Exhibit I – NSC transcript)(McClanahan, Kelly) (Entered: 11/21/2017)
12/01/2017	<u>18</u>	MEMORANDUM OPINION AND ORDER denying <u>13</u> Motion to Expedite. Signed by Judge Ketanji Brown Jackson on 12/1/2017. (lckbj2) Modified event title on 12/4/2017 (znmw). (Entered: 12/01/2017)
12/20/2017		NOTICE OF CORRECTED DOCKET ENTRY: Document No. re <u>15</u> Memorandum in Opposition was entered in error and counsel was instructed to refile said pleading. (See LCvR 5.4(a) (Sept. 9, 2017 amend. "All documents to be filed with the Court must be filed by electronic text-searchable means) (jf) (Entered: 12/20/2017)
12/20/2017	<u>19</u>	Memorandum in opposition to re <u>13</u> MOTION to Expedite <i>Consideration of Count 5 (Refiled ECF No. 15)</i> filed by DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Declaration of David M. Hardy dated Nov. 15, 2017)(Cohen, Jason) (Entered: 12/20/2017)
12/22/2017	<u>20</u>	Memorandum in opposition to re <u>14</u> MOTION for Order to Preserve Records filed by DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Second Declaration of David M. Hardy)(Cohen, Jason) (Entered: 12/22/2017)
01/12/2018	<u>21</u>	REPLY to opposition to motion re <u>14</u> MOTION for Order to Preserve Records filed by KEEPING GOVERNMENT BEHOLDEN, INC.. (Attachments: # <u>1</u> Exhibit C – Colgan Hardy Declaration)(McClanahan, Kelly) (Entered: 01/12/2018)
09/30/2018	<u>22</u>	ORDER, denying KGBs motion (ECF No. 14)for a preservation order. Signed by Judge Ketanji Brown Jackson on 9/30/2018. (lckbj2) (Entered: 09/30/2018)
10/15/2018		MINUTE ORDER. It is hereby ORDERED that the parties shall file a joint report regarding the processing and production of records responsive to Plaintiff's FOIA requests on or before 10/29/2018, which shall contain a proposed schedule for further proceedings if litigation is going to be necessary. Signed by Judge Ketanji Brown Jackson on 10/15/2018. (lckbj1) (Entered: 10/15/2018)
10/29/2018	<u>23</u>	PROPOSED BRIEFING SCHEDEULE by DEPARTMENT OF JUSTICE. (Cohen, Jason) (Entered: 10/29/2018)
11/06/2018	<u>24</u>	ORDER setting briefing schedule for summary judgment: Defendant's Motion for Summary Judgment shall be served on or before 2/1/2019; Plaintiff's Opposition and Cross–Motion for Summary Judgment shall be served on or before 3/4/2019; Defendant's Reply and Cross–Motion Opposition shall be served on or before 4/3/2019; Plaintiff's Cross–Motion Reply shall be served on or before 4/19/2019; briefs shall be filed as a batch within three (3) business days of the service of the last reply brief authorized by this Minute Order, but in any event no later than the Final Filing Deadline of 5/24/2019. Signed by Judge Ketanji Brown Jackson on 11/6/2018. (lckbj1) (Entered: 11/06/2018)
01/29/2019	<u>25</u>	Unopposed MOTION to Extend Briefing Schedule by DEPARTMENT OF JUSTICE (Attachments: # <u>1</u> Text of Proposed Order)(Cohen, Jason) Modified event on 1/30/2019 (znmw). (Entered: 01/29/2019)
02/06/2019		MINUTE ORDER granting Defendant's Unopposed Motion <u>25</u> to Extend Briefing Schedule for good cause shown. It is hereby ORDERED that Defendant's Motion for Summary Judgment shall be served on or before 3/18/2019; Plaintiff's Opposition and Cross–Motion for Summary Judgment shall be served on or before 4/18/2019; Defendant's Reply and Cross–Motion Opposition shall be served on or before 5/20/2019; Plaintiff's Cross–Motion Reply shall be served on or before 6/3/2019;

		briefs shall be filed as a batch within three (3) business days of the service of the last reply brief authorized by this Minute Order, but in any event no later than the Final Filing Deadline of 7/8/2019. Signed by Judge Ketanji Brown Jackson on 2/6/19. (lckbj3) . (Entered: 02/06/2019)
02/07/2019		Set/Reset Deadlines: Cross Motions due by 4/18/2019. Response to Cross Motions due by 5/20/2019. Reply to Cross Motions due by 6/3/2019. Summary Judgment motions due by 3/18/2019. Response to Motion for Summary Judgment due by 4/18/2019. Reply to Motion for Summary Judgment due by 5/20/2019. (gdf) (Entered: 02/07/2019)
03/25/2019	<u>26</u>	NOTICE of Service by DEPARTMENT OF JUSTICE (Cohen, Jason) (Entered: 03/25/2019)
05/08/2019	<u>27</u>	NOTICE of Service of Opposition and Cross–Motion by KEEPING GOVERNMENT BEHOLDEN, INC. (McClanahan, Kelly) (Entered: 05/08/2019)
06/11/2019	<u>28</u>	NOTICE of Service by DEPARTMENT OF JUSTICE (Cohen, Jason) (Entered: 06/11/2019)
06/28/2019	<u>29</u>	NOTICE of Service of Reply and Sur–Reply by KEEPING GOVERNMENT BEHOLDEN, INC. (McClanahan, Kelly) (Entered: 06/28/2019)
07/01/2019	<u>30</u>	MOTION for Summary Judgment by DEPARTMENT OF JUSTICE (Attachments: # <u>1</u> Third Declaration of David M. Hardy, # <u>2</u> Exhibit A – Exemption Application Index, # <u>3</u> Exhibits B–CC, # <u>4</u> Exhibit DD – BOP Declaration, # <u>5</u> Exhibit EE – DIA declaration, # <u>6</u> Exhibit FF – USPIS Declaration, # <u>7</u> Exhibit GG – ODNI Declaration)(Cohen, Jason) (Entered: 07/01/2019)
07/01/2019	<u>31</u>	Memorandum in opposition to re <u>30</u> MOTION for Summary Judgment filed by KEEPING GOVERNMENT BEHOLDEN, INC.. (Attachments: # <u>1</u> Exhibit index, # <u>2</u> Exhibit A – Example released records, # <u>3</u> Exhibit B – McClanahan declaration, # <u>4</u> Text of Proposed Order)(McClanahan, Kelly) (Entered: 07/01/2019)
07/01/2019	<u>32</u>	Cross MOTION for Partial Summary Judgment by KEEPING GOVERNMENT BEHOLDEN, INC. (Attachments: # <u>1</u> Exhibit index, # <u>2</u> Exhibit A – Example released records, # <u>3</u> Exhibit B – McClanahan declaration, # <u>4</u> Text of Proposed Order)(McClanahan, Kelly) (Entered: 07/01/2019)
07/01/2019	<u>33</u>	REPLY to opposition to motion re <u>30</u> MOTION for Summary Judgment and Opposition to Plaintiff's Cross–Motion for Summary Judgment filed by DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Defendant's Response to Plaintiff's Statement of Facts, # <u>2</u> Fourth Declaration of David M. Hardy)(Cohen, Jason) (Entered: 07/01/2019)
07/01/2019	<u>34</u>	Memorandum in opposition to re <u>32</u> Cross MOTION for Partial Summary Judgment (Duplicate Filing of ECF No. 33) filed by DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Defendant's Response to Plaintiff's Statement of Facts, # <u>2</u> Fourth Declaration of David M. Hardy)(Cohen, Jason) (Entered: 07/01/2019)
07/01/2019	<u>35</u>	REPLY to opposition to motion re <u>32</u> Cross MOTION for Partial Summary Judgment filed by KEEPING GOVERNMENT BEHOLDEN, INC.. (McClanahan, Kelly) (Entered: 07/01/2019)
07/01/2019	<u>36</u>	MOTION for Leave to File Sur–Reply by KEEPING GOVERNMENT BEHOLDEN, INC. (Attachments: # <u>1</u> Sur–Reply, # <u>2</u> Text of Proposed Order)(McClanahan, Kelly) (Entered: 07/01/2019)
07/01/2019	<u>37</u>	MOTION to Seal Leave to Submit Declaration Under Seal and Ex Parte, In Camera in Support of Motion for Summary Judgment by DEPARTMENT OF JUSTICE (Cohen, Jason) Modified event on 7/3/2019 (znmw). (Entered: 07/01/2019)
07/08/2019		MINUTE ORDER granting <u>37</u> Motion for Leave to Submit Declaration Under Seal and Ex Parte, In Camera in Support of Motion for Summary Judgment. Signed by Judge Ketanji Brown Jackson on 7/8/2019. (lckbj1) (Entered: 07/08/2019)
07/28/2019	<u>38</u>	MOTION to Vacate Order on Motion to Seal Document by KEEPING GOVERNMENT BEHOLDEN, INC. (Attachments: # <u>1</u> Text of Proposed Order)(McClanahan, Kelly) (Entered: 07/28/2019)

08/02/2019		MINUTE ORDER. On July 8, 2019, this Court granted Defendant's <u>37</u> motion for leave to submit a declaration under seal and ex parte, in camera in support of its motion for summary judgment. (See Min. Order of July 8, 2019.) Plaintiff opposed the motion but did not have a chance to file an opposition before the Court issued its Order. Plaintiff now moves to vacate the Court's Order and to have the opportunity to file an opposition to Defendant's original motion. (See ECF No. 38.) As cause, counsel represents that Plaintiff was "depriv[ed] of the opportunity to bring information to the Court's attention and explain why Defendant's motion should be denied in part if not in its entirety." (Id. at 1.) Defendant has yet to file the supplemental declaration, and the Court will now provide Plaintiff with the requested opportunity to oppose the ex parte, in camera submission in writing. If, upon reviewing Plaintiff's submission, the Court is persuaded that Defendant's motion to submit the ex parte, in camera declaration was improperly granted, it will vacate its prior Order. Accordingly, it is hereby ORDERED that Plaintiff's <u>38</u> Motion to Vacate the Court's July 8, 2019, Minute Order is GRANTED IN PART and DENIED IN PART, insofar as Plaintiff will be granted the opportunity to submit a written opposition to Defendant's motion. Plaintiff shall file its opposition on or before August 9, 2019, and Defendant shall file any reply on or before August 16, 2019. It is FURTHER ORDERED that this Court's Order of July 8, 2019, granting Defendant's <u>37</u> motion for leave to submit a declaration under seal and ex parte, in camera, will be HELD IN ABEYANCE pending the submission of the parties' briefs concerning Defendant's <u>37</u> motion for leave. Signed by Judge Ketanji Brown Jackson on 8/2/2019. (lckbj2) (Entered: 08/02/2019)
08/07/2019	<u>39</u>	MOTION for Extension of Time to File Response/Reply by KEEPING GOVERNMENT BEHOLDEN, INC. (Attachments: # <u>1</u> Text of Proposed Order)(McClanahan, Kelly) (Entered: 08/07/2019)